to observe any food safety audit conducted under this subpart for purposes of evaluating the accredited third-party certification body's performance under §§ 1.621 and 1.662 or, where appropriate, the recognized accreditation body's performance under §§ 1.622 and 1.633.

(c) *Audit protocols.* An accredited third-party certification body (or its audit agent, where applicable) must conduct a food safety audit in a manner consistent with the identified scope and purpose of the audit and within the scope of its accreditation.

(1) With the exception of records review, which may be scheduled, the audit must be conducted without announcement during the 30-day timeframe identified under paragraph (a)(1)(ii) of this section and must be focused on determining whether the facility, its process(es), and food are in compliance with applicable food safety requirements of the FD&C Act and FDA regulations, and, for consultative audits, also includes conformance with applicable industry standards and practices that are within the scope of the audit.

(2) The audit must include records review prior to the onsite examination; an onsite examination of the facility, its process(es), and the food that results from such process(es); and where appropriate or when required by FDA, environmental or product sampling and analysis. When, for a regulatory audit, sampling and analysis is conducted, the accredited third-party certification body must use a laboratory that is accredited in accordance with paragraph (b)(3) of this section. The audit may include any other activities necessary to determine compliance with applicable food safety requirements of the FD&C Act and FDA regulations, and, for consultative audits, also includes conformance with applicable industry standards and practices.

(3) The audit must be sufficiently rigorous to allow the accredited third-party certification body to determine whether the eligible entity is in compliance with the applicable food safety requirements of the FD&C Act and FDA regulations, and for consultative audits, also includes conformance with applicable industry standards and practices, at the time of the audit; and for a regulatory audit, whether the eligible entity, given its food safety system and practices would be likely to remain in compliance with the applicable food safety requirements of the FD&C Act and FDA regulations for the duration of any certification issued under this subpart. An accredited third-party certification body (or its audit agent, where applicable) that identifies a deficiency requiring corrective action may verify the effectiveness of a corrective action once implemented by the eligible entity but must not recommend or provide input to the eligible entity in identifying, selecting, or implementing the corrective action.

(4) Audit observations and other data and information from the examination, including information on corrective actions, must be documented and must be used to support the findings contained in the audit report required by § 1.652 and maintained as a record under § 1.658.

§ 1.652 What must an accredited third-party certification body include in food safety audit reports?

(a) *Consultative audits.* An accredited third-party certification body must prepare a report of a consultative audit not later than 45 days after completing such audit and must provide a copy of such report to the eligible entity and must maintain such report under § 1.658, subject to FDA access in accordance with the requirements of section 414 of the FD&C Act. A consultative audit report must include:

(1) The identity of the site or location where the consultative audit was conducted, including:

(i) The name, address and the FDA Establishment Identifier of the facility subject to the consultative audit and a unique facility identifier, if designated by FDA; and

(ii) Where applicable, the FDA registration number assigned to the facility under subpart H of this part;

(2) The identity of the eligible entity, if different from the facility, including the name, address, the FDA Establishment Identifier and unique facility identifier, if designated by FDA, and, where applicable, registration number under subpart H of this part;

(3) The name(s) and telephone number(s) of the person(s) responsible for compliance with the applicable food safety requirements of the FD&C Act and FDA regulations

(4) The dates and scope of the consultative audit;

(5) The process(es) and food(s) observed during such consultative audit; and

(6) Any deficiencies observed that relate to or may influence a determination of compliance with the applicable food safety requirements of the FD&C Act and FDA regulations that require corrective action, the corrective action plan, and the date on which such corrective actions were completed. Such consultative audit report must be maintained as a record under §1.658 and must be made available to FDA in accordance with section 414 of the FD&C Act.

(b) *Regulatory audits.* An accredited third-party certification body must, no later than 45 days after completing a regulatory audit, prepare and submit electronically, in English, to FDA and to its recognized accreditation body (or, in the case of direct accreditation, only to FDA) and must provide to the eligible entity a report of such regulatory audit that includes the following information:

(1) The identity of the site or location where the regulatory audit was conducted, including:

(i) The name, address, and FDA Establishment Identifier of the facility subject to the regulatory audit and a unique facility identifier, if designated by FDA; and

(ii) Where applicable, the FDA registration number assigned to the facility under subpart H of this part;

(2) The identity of the eligible entity, if different from the facility, including the name, address, FDA Establishment Identifier, and unique facility identifier, if designated by FDA, and, where applicable, registration number under subpart H of this part;

(3) The dates and scope of the regulatory audit;

(4) The process(es) and food(s) observed during such regulatory audit;

(5) The name(s) and telephone number(s) of the person(s) responsible for the facility's compliance with the applicable food safety requirements of the FD&C Act and FDA regulations;

(6) Any deficiencies observed during the regulatory audit that present a reasonable probability that the use of or exposure to a violative product:

(i) Will cause serious adverse health consequences or death to humans and animals; or

(ii) May cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences or death to humans or animals is remote;

(7) The corrective action plan for addressing each deficiency identified under paragraph (b)(6) of this section, unless corrective action was implemented immediately and verified onsite by the accredited third-party certification body (or its audit agent, where applicable);

(8) Whether any sampling and laboratory analysis (*e.g.*, under a microbiological sampling plan) is performed in or used by the facility; and

(9) Whether the eligible entity has made significant changes to the facility, its process(es), or food products during the 2 years preceding the regulatory audit.

(c) *Submission of regulatory audit report.* An accredited third-party certification body must submit a completed regulatory audit report as required by paragraph (b) of this section, regardless of whether the certification body issued a food or facility certification to the eligible entity.

(d) *Notice and appeals of adverse regulatory audit results.* An accredited third-party certification body must notify an eligible entity of a denial of certification and must establish and implement written procedures for receiving and addressing appeals from eligible entities challenging such adverse regulatory audit results and for investigating and deciding on appeals in a fair and meaningful manner. The appeals procedures must provide similar protections to those offered by FDA under §§1.692 and 1.693, including requirements to:

(1) Make the appeals procedures publicly available;

(2) Use competent persons, who may or may not be external to the accredited third-party certification body, who

are free from bias or prejudice and have not participated in the certification decision or be subordinate to a person who has participated in the certification decision, to investigate and decide appeals;

(3) Advise the eligible entity of the final decision on its appeal; and

(4) Maintain records under §1.658 of the appeal, the final decision, and the basis for such decision.

§ 1.653 What must an accredited third-party certification body do when issuing food or facility certifications?

(a) *Basis for issuance of a food or facility certification.* (1) Prior to issuing a food or facility certification to an eligible entity, an accredited third-party certification body (or, where applicable, an audit agent on its behalf) must complete a regulatory audit that meets the requirements of §1.651 and any other activities that may be necessary to determine compliance with the applicable food safety requirements of the FD&C Act and FDA regulations.

(2) If, as a result of an observation during a regulatory audit, an eligible entity must implement a corrective action plan to address a deficiency, an accredited third-party certification body may not issue a food or facility certification to such entity until after the accredited third-party certification body verifies that eligible entity has implemented the corrective action plan through methods that reliably verify the corrective action was taken and as a result the identified deficiency is unlikely to recur, except onsite verification is required for corrective actions required to address deficiencies that are the subject of a notification under §1.656(c).

(3) An accredited third-party certification body must consider each observation and the data and other information from a regulatory audit and other activities conducted under §1.651 to determine whether the entity was in compliance with the applicable food safety requirements of the FD&C Act and FDA regulations at the time of the audit and whether the eligible entity, given its food safety system and practices, would be likely to remain in compliance for the duration of any certification issued under this subpart.

(4) A single regulatory audit may result in issuance of one or more food or facility certifications under this subpart, provided that the requirements of issuance are met as to each such certification.

(5) Where an accredited third-party certification body uses an audit agent to conduct a regulatory audit of an eligible entity under this subpart, the accredited third-party certification body (and not the audit agent) must make the determination whether to issue a food or facility certification based on the results of such regulatory audit.

(b) *Issuance of a food or facility certification and submission to FDA.* (1) Any food or facility certification issued under this subpart must be submitted to FDA electronically and in English. The accredited third-party certification body may issue a food or facility certification under this subpart for a term of up to 12 months.

(2) A food or facility certification must contain, at a minimum, the following elements:

(i) The name and address of the accredited third-party certification body and the scope and date of its accreditation under this subpart;

(ii) The name, address, FDA Establishment Identifier, and unique facility identifier, if designated by FDA, of the eligible entity to which the food or facility certification was issued;

(iii) The name, address, FDA Establishment Identifier, and unique facility identifier, if designated by FDA, of the facility where the regulatory audit was conducted, if different than the eligible entity;

(iv) The scope and date(s) of the regulatory audit and the certification number;

(v) The name of the audit agent(s) (where applicable) conducting the regulatory audit; and

(vi) The scope of the food or facility certification, date of issuance, and date of expiration.

(3) FDA may refuse to accept any certification for purposes of section 801(q) or 806 of the FD&C Act, if FDA determines, that such food or facility certification is not valid or reliable because, for example: